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8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF WASHINGTON**

10 DISCOVERORG DATA, LLC,

11 Plaintiff,

12 v.

13 LUMEN21, INC.,

14 Defendant.  
15

Case No. 3:19-cv-05250

**COMPLAINT**

**JURY DEMAND**

16  
17 Plaintiff DiscoverOrg Data, LLC (“DiscoverOrg”), for its complaint against  
18 Lumen21, Inc. (“Lumen21”), alleges as follows:

19 **PARTIES**

20 1. DiscoverOrg is a Delaware limited liability company with its principal  
21 place of business in Vancouver, Washington.

22 2. Lumen21 is a Nevada corporation with a principal place of business in  
23 the State of California and does business in the State of Washington.

24 **JURISDICTION AND VENUE**

25 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332,  
26 as the parties are completely diverse in citizenship and the amount in controversy  
27 exceeds \$75,000, and separately under 18 U.S.C. §§ 1331 and 1338(a) and (b)  
28 because DiscoverOrg asserts claims arising under Federal Law. This court also has

1 supplemental jurisdiction for the state law claims pursuant to 28 U.S.C. § 1367.

2 4. This court has personal jurisdiction over Lumen21, and venue is properly  
3 laid in this district court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(a), in  
4 that Lumen21 transacts business in this state and has committed tortious acts  
5 within this state. *See* RCW 4.28.185.

6 5. Additionally, this Court has personal jurisdiction over Lumen21 because  
7 Lumen21 has consented to the jurisdiction of the courts of this State in the contract  
8 at issue.

9 6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because  
10 Lumen21 has agreed that all claims in connection with the contract at issue may be  
11 brought in the courts of this State.

## 12 **FACTS AND ALLEGATIONS**

### 13 **A. DiscoverOrg's Database**

14 7. DiscoverOrg is a provider of business-to-business (“b2b”) marketing  
15 data, which it delivers to clients via a password-secured, online graphical user  
16 interface. DiscoverOrg uses technology, computers, and electronic communication  
17 systems to provide subscribers with to its database of marketing information  
18 profiling businesses in the United States and globally. DiscoverOrg has been  
19 recognized as an industry leader in sales and marketing intelligence. The depth,  
20 breadth, and accuracy of DiscoverOrg's database is unrivaled in the marketplace.

21 8. DiscoverOrg has invested tens of millions of dollars to develop and  
22 maintain the infrastructure and content of its database and ensure that it is of the  
23 highest quality. DiscoverOrg employs hundreds of research analysts focused on  
24 building, managing, and updating DiscoverOrg's database, in order to deliver  
25 timely and comprehensive data being made available to DiscoverOrg's clients.  
26 DiscoverOrg has expended substantial labor, time, resources, effort, and money to  
27 select, gather, collect, organize, generate, arrange, and disseminate the timely and  
28 continuously updated information DiscoverOrg provides in its database. In total

DiscoverOrg employs more than 1,000 people and has made significant investment in developing and purchasing software, hardware and other equipment to continuously update and support the accuracy and comprehensiveness of its database. DiscoverOrg's database exhibits DiscoverOrg's decisions and input as to the selection, arrangement, orchestration, compilation, and presentation of the organizational charts, contacts, and other information collected and assembled by DiscoverOrg's analysts.

9. DiscoverOrg's database is valuable to companies like Lumen21, who benefit from the use of detailed information in their efforts to market their own products and services. DiscoverOrg has licensed subscription access to its database to approximately 4,000 companies, who pay licensing fees for the right to access and use DiscoverOrg's database.

10. The value of DiscoverOrg's database is related to and dependent upon its proprietary and non-public nature. DiscoverOrg takes steps to protect the security of the information contained in its database. For example, DiscoverOrg limits access to its database to only authorized users pursuant to restrictive license agreements. DiscoverOrg's database is password-protected, and DiscoverOrg utilizes mail monitoring and list protection to further secure and ensure the integrity of DiscoverOrg's database.

## **B. Lumen21 Enters Into a License Agreement with DiscoverOrg**

11. On or around August 16, 2016, Lumen21 entered into a license agreement with DiscoverOrg to access and use certain data in its database, comprised of an order form (the "Order Form", attached hereto as Exhibit A) and the End User License Agreement (the "EULA"), incorporated by reference into the Order Form (together, the "Agreement"). A copy of the EULA is attached as Exhibit B.

12. The initial term of the Agreement ran from August 16, 2016 through August 15, 2017 (the "Initial Term"). The licensing fees to be paid during the

1 Initial Term by Lumen21 totaled \$15,000.00. Ex. A; Ex. B § 7.1.

2 13. In the Agreement, “Licensee” means Lumen21. The EULA states  
3 “Licensee shall pay all fees stated in the Ordering Document (the “Subscription  
4 Fee”).” Ex. B § 3. The Order Form identifies custom payment terms as follows:  
5 “Quarterly payments of \$3,750 will be due as follows: Net 30 from Date of  
6 Execution; November 15, 2016; February 15, 2017; May 15, 2017.” Ex. A, 2.

7 14. The EULA also provides for continuous service at the end of the Initial  
8 Term, but only if neither party opts out of the automatic extension:

9 “The Initial Term of this Agreement is specified in the Ordering  
10 Document (and, together with all periods of extension, the  
11 “Term”). On the last day of the Term, the Term will extend for a  
12 successive period equal to the length of the Initial Term, unless  
13 either party notifies the other in writing at least ninety (90) days  
14 prior to the end of the then-current Term of its intent that the  
15 Term not so extend. In the event that the Term is so extended, the  
16 Subscription Fee for the period of such extension shall equal the  
Subscription Fee applicable to the period of equal length  
immediately preceding such period such extension, plus 10% of such  
fee.”

17 Ex B § 7.1.

18 15. The Agreement further provides that “Upon expiration or termination  
19 of this Agreement, Licensee shall cease accessing the Licensed Materials or using  
20 the Licensed Materials in any way,” (*Id.* § 4.2) and that “Upon expiration or  
21 termination of this Agreement, Licensee agrees to destroy any and all copies of  
22 Licensed Materials and any information it has obtained from the Licensed  
23 Materials, whether in hard copy or electronic form.” *Id.* § 7.2.

24 16. The Agreement also provides that “In the event of any dispute arising  
25 under this agreement, the prevailing party shall be entitled to recover its reasonable  
26 costs and expenses actually incurred in endeavoring to enforce the terms of this  
27 Agreement, including reasonable attorney fees.” *Id.* § 13.1.  
28

1        17. On August 16, 2017, the Agreement extended for another 12-month term  
 2 (the “Renewal Term”) according to its terms, because neither party provided  
 3 written notice of its intent that the Term not so extend.

4 **C. Lumen21 Breaches Agreement with DiscoverOrg**

5        18. Upon information and belief, Lumen21 disputes the validity of the  
 6 extension of the Term of the Agreement. Lumen21 has failed to make the final  
 7 quarterly payment associated with the Initial Term of the Agreement (\$3,750) as  
 8 well as the full subscription fee associated with the Renewal Term (\$16,500).

9        19. Non-payment of the subscription fee is a material breach of the  
 10 Agreement.

11 **D. Lumen21 Continued Accessing and Using the DiscoverOrg Database and**  
 12 **Data Obtained from the DiscoverOrg Database in the Renewal Term**

13        20. Despite Lumen21’s non-payment of the subscription fee in the Initial  
 14 Term and Renewal Term, Lumen21 continued accessing and using the Licensed  
 15 Materials after the Initial Term.

16        21. In the Renewal Term, Lumen21 performed over 150 unique search  
 17 actions within the DiscoverOrg database and exported over 230,000 contact  
 18 records from the DiscoverOrg database through 39 distinct export actions.

19        22. Lumen21 has continued to use data obtained from the DiscoverOrg  
 20 database for its marketing and sales efforts despite failing to meet its payment  
 21 obligations outlined in the Agreement.

22 **FIRST CLAIM FOR RELIEF**

23 **(Breach of Contract)**

24        23. DiscoverOrg incorporates herein by reference the allegations in  
 25 paragraphs 1 through 22.

26        24. Lumen21 entered into the Agreement with DiscoverOrg, which was duly  
 27 made and binding on both parties.

28        25. Lumen21 breached the Agreement by failing to make timely payments to

1 DiscoverOrg in accordance with the payment terms of the Agreement.

2 26. DiscoverOrg has been damaged by Lumen21 because it has not been  
3 compensated for Lumen21's access and use of DiscoverOrg's software and data.

4 27. By reason of the foregoing, Lumen21 is liable to DiscoverOrg for  
5 damages in an amount of the subscription fee owed for the Renewal Term and the  
6 remaining outstanding balance from the Initial Term of the Agreement and,  
7 pursuant to the terms of the Agreement, DiscoverOrg's reasonable attorney fees.

## 8 **SECOND CLAIM FOR RELIEF**

### 9 **(Breach of Contract)**

10 28. This claim is pled in the alternative to DiscoverOrg's First Claim for  
11 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
12 through 27.

13 29. Lumen21 entered into the Agreement with DiscoverOrg, which was duly  
14 made and binding on both parties.

15 30. Lumen21 breached the Agreement by failing to remove all data that  
16 Lumen21 obtained from DiscoverOrg after the expiration of the Initial Term of the  
17 Agreement.

18 31. Lumen21 also breached the Agreement by continuing to access and use  
19 Licensed Materials after the expiration of the Initial Term of the Agreement.

20 32. DiscoverOrg has been damaged by Lumen21's aforementioned actions  
21 through the lost opportunity to realize licensing revenue and the diminution of the  
22 market value of its proprietary information.

23 33. By reason of the foregoing, Lumen21 is liable to DiscoverOrg for  
24 damages in an amount of the subscription fee owed for the Renewal Term, and the  
25 remaining outstanding balance from the Initial Term of the Agreement, and the  
26 costs and expenses incurred by DiscoverOrg in enforcing the Agreement, including  
27 its reasonable attorney fees.  
28

**THIRD CLAIM FOR RELIEF****(Theft of Trade Secrets - 18 U.S.C. § 1832 *et seq.*)**

34. This claim is pled in the alternative to DiscoverOrg's First Claim for Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 33.

35. DiscoverOrg gathers, organizes, generates, collects, and assembles in-depth, commercially-valuable information (including reporting structures, contact information, and other data) expending substantial time, labor, and expense. DiscoverOrg's database and the information contained therein comprise a compilation of business information. Information from DiscoverOrg's database is used in interstate commerce.

36. The compilation of information in DiscoverOrg's database derives independent economic value from not being generally known to, and not being readily ascertainable through proper means by, those who are not licensed by DiscoverOrg to access the database. Non-licensees can obtain economic value from the disclosure or use of the information in DiscoverOrg's database.

37. DiscoverOrg has taken reasonable measures to protect and keep the information in its database secret by limiting access to those customers who agree to the terms of the access in the licensing agreement and requiring password authentication to access the database through its secure online portal. DiscoverOrg also does its best to monitor access to the database and use of the information to further ensure its security.

38. Lumen21 used improper means, including unauthorized access to a protected computer, to obtain access to and acquire information from DiscoverOrg's database. Lumen21 knew or had reason to know at the time it obtained that it was not authorized to access or use DiscoverOrg's proprietary data because its license had expired.

39. Lumen21 attempted to and did knowingly and without authorization



1 download, copy, and duplicate information from DiscoverOrg's proprietary  
2 database. Lumen21 received and possessed information from DiscoverOrg's  
3 proprietary database that Lumen21 knew to have been converted without  
4 authorization.

5 40. Lumen21 willfully and maliciously misappropriated DiscoverOrg's trade  
6 secrets by continuing to use login credentials after the expiration of the Initial Term  
7 of the Agreement, accessing DiscoverOrg's computer systems without  
8 authorization, copying the information contained therein, and using that  
9 information for Lumen21's financial gain.

10 41. DiscoverOrg has been damaged by Lumen21's actions through the lost  
11 opportunity to realize licensing revenue and the diminution of the market value of  
12 its proprietary information. Lumen21 has been unjustly enriched by the use of  
13 valuable marketing and sales information without paying compensation and  
14 through the consummation of business transactions that would not have occurred  
15 without use of the stolen information. DiscoverOrg would, in the alternative, be  
16 entitled to a reasonable royalty for Lumen21's use of the information.

17 42. By reason of the foregoing, Lumen21 is liable to DiscoverOrg for  
18 damages and unjust enrichment or a reasonable royalty, in an amount to be proven  
19 at trial. DiscoverOrg is also entitled to exemplary damages and its reasonable  
20 attorney fees. Finally, DiscoverOrg is entitled to an injunction preventing Lumen21  
21 from continuing to possess or use information obtained from DiscoverOrg's  
22 database.

#### 23 **FOURTH CLAIM FOR RELIEF**

##### 24 **(Misappropriation of Trade Secrets - RCW 19.108.010 *et seq.*)**

25 43. This claim is pled in the alternative to DiscoverOrg's First Claim for  
26 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
27 through 42.

28 44. By reason of the foregoing, Lumen21 is liable to DiscoverOrg for



1 damages and unjust enrichment or a reasonably royalty, in an amount to be proven  
 2 at trial. DiscoverOrg is also entitled to exemplary damages and its reasonable  
 3 attorney fees. Finally, DiscoverOrg is entitled to an injunction preventing Lumen21  
 4 from continuing to possess or use information obtained from DiscoverOrg's  
 5 database.

## 6 **FIFTH CLAIM FOR RELIEF**

### 7 **(Misappropriation)**

8 45. This claim is pled in the alternative to DiscoverOrg's First Claim for  
 9 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
 10 through 44.

11 46. DiscoverOrg gathers, organizes, generates, collects, and assembles in-  
 12 depth, commercially-valuable information (including reporting structures, contact  
 13 information, and other data) expending substantial time, labor, and expense.

14 47. Lumen21 intentionally and without permission, accessed and copied  
 15 information from DiscoverOrg's database, used the stolen information for its own  
 16 financial gain, and profited therefrom. Lumen21 has taken a "free-ride" on  
 17 DiscoverOrg's skill, labor, and costly and substantial efforts in creating its  
 18 commercially-valuable database.

19 48. Lumen21's actions have damaged DiscoverOrg in the form of lost profits  
 20 and diminution of the market value of its database. By reason of the foregoing  
 21 misappropriation of DiscoverOrg's data, Lumen21 is liable to DiscoverOrg for  
 22 compensatory damages including wrongfully derived revenues in an amount to be  
 23 proven at trial.

## 24 **SIXTH CLAIM FOR RELIEF**

### 25 **(Copyright Infringement)**

26 49. This claim is pled in the alternative to DiscoverOrg's First Claim for  
 27 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
 28 through 48.

1        50. DiscoverOrg's database is an original work of authorship containing  
2 copyrightable subject matter for which copyright protection exists under the  
3 Copyright Act. DiscoverOrg has filed for copyright registration with the United  
4 States Copyright Office in compliance with 17 U.S.C. § 101 *et seq.* DiscoverOrg's  
5 copyright was registered December 27, 2010 with registration number  
6 TX0007487999.

7        51. As owner of all right, title, and interest in and to the copyrighted works,  
8 DiscoverOrg is entitled to all the exclusive rights and remedies accorded by Section  
9 106 of the Copyright Act to a copyright owner, including the exclusive rights to  
10 reproduce the copyrighted works and to sell non-exclusive licenses to those  
11 copyrighted works.

12        52. Lumen21 has gained access to and made and used copies of  
13 DiscoverOrg's copyrighted material without authorization or license from  
14 DiscoverOrg. Lumen21 used those copies for Lumen21's financial gain without  
15 compensating DiscoverOrg. In doing so, Lumen21 has violated DiscoverOrg's  
16 exclusive rights of reproduction and distribution.

17        53. At all relevant times, Lumen21 had the responsibility and the ability to  
18 supervise and monitor the actions its employees and agents, whose actions were  
19 performed on its behalf and for its direct financial benefit and were within the scope  
20 of their employment for Lumen21.

21        54. With knowledge of the infringing activity, Lumen21 induced, caused,  
22 facilitated, encouraged, and/or or materially contributed to the infringing conduct.

23        55. Lumen21's acts of infringement have been willful and intentional, in  
24 disregard of and with indifference to the rights of DiscoverOrg.

25        56. As a direct and proximate results of the foregoing acts, DiscoverOrg has  
26 been and will continue to be harmed. DiscoverOrg is entitled to its actual damages,  
27 including any and all profits due to Lumen21's wrongful conduct, or statutory  
28 damages. DiscoverOrg is also entitled to its costs, including reasonable attorney

1 fees.

## 2 **SEVENTH CLAIM FOR RELIEF**

### 3 **(Violation of the Computer Fraud and Abuse Act)**

4 57. This claim is pled in the alternative to DiscoverOrg's First Claim for  
5 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
6 through 56.

7 58. DiscoverOrg's computer system and database comprise "protected  
8 computers" within the meaning of 18 U.S.C. § 1030(e)(2).

9 59. Lumen21, knowingly and with intent to defraud DiscoverOrg, accessed  
10 DiscoverOrg's protected computers without authorization and thereby obtained  
11 valuable information from such protected computers using interstate  
12 communication.

13 60. Lumen21's actions constitute violations of 18 U.S.C. §§ 1030(a)(2)(C)  
14 and 1030(a)(4).

15 61. Lumen21's unauthorized access of DiscoverOrg's computer system has  
16 caused loss to DiscoverOrg of more than \$5,000 in value.

17 62. By reason of the foregoing, DiscoverOrg is entitled to compensatory  
18 damages in an amount to be determined at trial pursuant to 18 U.S.C. § 1030(g).

## 19 **EIGHTH CLAIM FOR RELIEF**

### 20 **(Trespass to Chattels)**

21 63. This claim is pled in the alternative to DiscoverOrg's First Claim for  
22 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
23 through 62.

24 64. DiscoverOrg owns a computer system that houses its proprietary  
25 electronic database. DiscoverOrg grants password access to this system only to its  
26 clients.

27 65. Lumen21 intentionally accessed DiscoverOrg's computer system  
28 without authorization and thereby interfered with DiscoverOrg's possessory

1 interest in its computer systems.

2 66. As a result of Lumen21's trespass to DiscoverOrg's computer system,  
3 Lumen21 caused damage to DiscoverOrg's database including, but not limited to,  
4 the diminution in the market value of DiscoverOrg's computerized data and  
5 information stored on such computer system. By reason of the foregoing, Lumen21  
6 is liable to DiscoverOrg for compensatory damages in an amount to be proven at  
7 trial.

## 8 **NINTH CLAIM FOR RELIEF**

### 9 **(Unjust Enrichment)**

10 67. This claim is pled in the alternative to DiscoverOrg's First Claim for  
11 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
12 through 66.

13 68. Through Lumen21's wrongful actions described herein, Lumen21 has  
14 been unjustly enriched through the use of DiscoverOrg's commercially-valuable  
15 data without compensation to DiscoverOrg.

16 69. Lumen21 is therefore liable to DiscoverOrg to the extent of such unjust  
17 enrichment in an amount to be determined at trial.

## 18 **TENTH CLAIM FOR RELIEF**

### 19 **(Negligence)**

20 70. This claim is pled in the alternative to DiscoverOrg's First Claim for  
21 Relief. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1  
22 through 69.

23 71. At all relevant times, Lumen21 was under a duty to take reasonable care  
24 in training and supervising its employees and other agents acting on its behalf.

25 72. It was foreseeable that the failure to train and supervise employees and  
26 other agents regarding appropriate methods for obtaining sales and marketing  
27 information for the benefit of Lumen21 would harm a third party such as  
28 DiscoverOrg.

73. Lumen21 breached its duty when it failed to train and supervise its employees by allowing them to carry out the unlawful conduct set forth in this complaint. In particular, Lumen21 failed to properly implement and enforce a policy prohibiting such conduct, as would be required of a reasonable entity.

74. As a direct and proximate result of Lumen21's negligence, DiscoverOrg has suffered damage in the form of lost profits and diminution of the market value of its database. Lumen21 is liable to DiscoverOrg for compensatory damages in an amount to be proven at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, DiscoverOrg prays for the following relief:

1. entry of judgment in its favor and against Lumen21 on all counts;
2. entry of judgment in its favor against Lumen21 on all of its Claims for Relief that Lumen21's unlawful conduct was willful and knowing;
3. as to its First Claim for Relief, the subscription fee owed for the Renewal Term and the remaining outstanding balance from the Initial Term of the Agreement and, pursuant to the terms of the Agreement, DiscoverOrg's reasonable attorney fees; or
4. in the alternative to the First Claim for Relief, as to its Second Claim for Relief, the subscription fee owed for the Renewal Term and the remaining outstanding balance from the Initial Term of the Agreement and, pursuant to the terms of the Agreement, DiscoverOrg's costs and expenses including reasonable attorney fees;
5. in the alternative to the First Claim for Relief, as to its Third Claim for Relief, its actual damages and unjust enrichment or a reasonably royalty, in an amount to be proven at trial, exemplary damages, and its reasonable attorney fees;
6. in the alternative to the First Claim for Relief, as to its Fourth Claim for Relief, its actual damages and unjust enrichment or a reasonably royalty, in an amount to be proven at trial, exemplary damages, and its reasonable attorney fees;

1       7.    in the alternative to the First Claim for Relief, as to its Fifth Claim for  
2 Relief, compensatory damages in an amount to be proven at trial;

3       8.    in the alternative to the First Claim for Relief, as to its Sixth Claim for  
4 Relief, actual damages in an amount to be proven at trial or statutory damages, plus  
5 costs including reasonable attorney fees;

6       9.    in the alternative to the First Claim for Relief, as to its Seventh Claim for  
7 Relief, compensatory damages in an amount to be proven at trial;

8       10.   in the alternative to the First Claim for Relief, as to its Eighth Claim for  
9 Relief, compensatory damages in an amount to be proven at trial;

10       11.   in the alternative to the First Claim for Relief, as to its Ninth Claim for  
11 Relief, the amount to be proven at trial by which Lumen21 has been unjustly  
12 enriched;

13       12.   in the alternative to the First Claim for Relief, as to its Tenth Claim for  
14 Relief, compensatory damages in an amount to be proven at trial;

15       13.   in the alternative to the First Claim for Relief, exemplary damages for  
16 Lumen21's willful and knowing infringement, theft, and misappropriation;

17       14.   in the alternative to the First Claim for Relief, immediate and permanent  
18 injunctive relief enjoining Lumen21 from using DiscoverOrg's trade secrets,  
19 copyrighted materials, and misappropriated products or services;

20       15.   in the alternative to the First Claim for Relief, an award of DiscoverOrg's  
21 costs of suit, including the costs of experts and reasonable attorneys' fees as  
22 permitted by law, for example pursuant to 18 U.S.C. § 1832 *et seq.*, RCW 19.108 *et.*  
23 *seq.*, and 17 U.S. Code § 505;

24       16.   an award of pre- and post-judgment interest; and

25       17.   such other relief as the Court may deem just and equitable.  
26  
27  
28

1 Dated: April 4, 2019

Respectfully submitted,

2 NEWMAN DU WORS LLP

3  
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